

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

DIRECTOR
Sharon L. Eubanks

DEPUTY DIRECTOR
Julie A. Pelegrin

REVISOR OF STATUTES
Jennifer G. Gilroy

ASSISTANT DIRECTORS
Jeremiah B. Barry Gregg W. Fraser
Christine B. Chase Duane H. Gall

PUBLICATIONS COORDINATOR
Kathy Zambrano



COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157
EMAIL: OLLS.GA@STATE.CO.US

MANAGING SENIOR ATTORNEYS
Jennifer A. Berman Jason Gelender
Michael J. Dohr Robert S. Lackner
Kristen J. Forrestal Jane M. Ritter

SENIOR ATTORNEYS
Brita Darling Richard Sweetman
Edward A. DeCecco Esther van Mourik
Yelana Love Thomas Morris
Nicole H. Myers Megan Waples
Jery Payne

SENIOR ATTORNEY FOR ANNOTATIONS
Michele D. Brown

STAFF ATTORNEYS
Jacob Baus Sarah Lozano
Conrad Imel Alana Rosen
H. Pierce Lively Shelby L. Ross

MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: March 23, 2021

SUBJECT: Explanation of S.B. 21-152, the Rule Review Bill

Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8)(d), C.R.S., of the State Administrative Procedure Act (APA) to submit their rules to the General Assembly for review.

Under section 24-4-103 (8)(c)(I), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly by bill acts to postpone the expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where the rule is reviewed to determine whether the rule is within the agency's rule-making authority and consistent with law. If an attorney finds a possible problem with a rule, and if the attorney is unable to resolve the problem with the agency, the Office prepares a memorandum on the issue and presents the issue to the Committee on Legal Services after notice to the affected agency. At the Committee hearing, an attorney with the Office explains why the rule lacks statutory authority or conflicts with the law and argues that the rule should not be extended beyond the May 15 expiration date. The Committee gives the affected agency an opportunity to respond and gives members of the public or other interested parties an opportunity to speak on the issue. After hearing all the testimony and asking

questions, the Committee then takes a vote to determine whether the rule should not be extended beyond the May 15 expiration date.

Each year, the Committee sponsors a bill (the annual rule review bill) that extends the rules adopted or amended during the previous year (i.e., those rules scheduled to expire on May 15); except that the bill specifically allows the expiration of those rules that the Committee determined not to extend beyond the May 15 expiration date. S.B. 21-152 is the Committee's annual rule review bill for 2021.

Explanation of S.B. 21-152

1. Rules of the State Board of Education, Department of Education, concerning administration of the public school transportation fund, 1 CCR 301-14 (LLS Docket No. 200440; SOS Tracking No. 2020-00263).

Staff: Michael Dohr

Explanation:

Section 22-51-105 (1), C.R.S., requires an entity desiring reimbursement from the public school transportation fund to certify the necessary information for reimbursement on or before August 15, but Rule 2251-R-2.02(1) conflicts with the statute because it allows the Department of Education to extend the deadline to September 15.

Agency position: The agency did not contest the staff recommendation not to extend the rule.

2. Rules of the Air Quality Control Commission, Department of Public Health and Environment, concerning Stationary Source Permitting and Air Pollutant Emission Notice Requirements, 5 CCR 1001-5 (LLS Docket No. 200109; SOS Tracking No. 2019-00545).

Staff: Thomas Morris

Explanation:

Section 25-7-114.1 (1), C.R.S., prohibits a person from emitting air pollutants from, or even constructing, a source without first filing an air pollutant emission notice (APEN) with the Division of Administration in the Department of Public Health and Environment. But the Air Quality Control Commission Rule II.A.2.a. conflicts with the statute because it allows owners or operators of oil and gas well production facilities to file an APEN 90 days after commencement of operations.

s:\lls\cols\rule review\rule review bills\2021 rr explanationmemo.docx

Agency position:

The agency did not contest the staff recommendation not to extend the rule.¹

- 3. Rules of the Division of Professions and Occupations, Department of Regulatory Agencies, concerning the implementation of H.B. 20-1326:**
4 CCR 726-1 (LLS Docket No. 200611; SOS Tracking No. 2020-00578);
4 CCR 737-1 (LLS Docket No. 200627; SOS Tracking No. 2020-00595);
3 CCR 721-1 (LLS Docket No. 200632; SOS Tracking No. 2020-00673);
4 CCR 744-1 (LLS Docket No. 200637; SOS Tracking No. 2020-00674);
4 CCR 736-1 (LLS Docket No. 200672; SOS Tracking No. 2020-00733);
4 CCR 731-1 (LLS Docket No. 200674; SOS Tracking No. 2020-00663);
3 CCR 711-1 (LLS Docket No. 200679; SOS Tracking No. 2020-00665);
3 CCR 711-2 (LLS Docket No. 200681; SOS Tracking No. 2020-00668);
3 CCR 722-1 (LLS Docket No. 200685; SOS Tracking No. 2020-00654).

Staff: Thomas Morris

Explanation:

Section 12-20-202 (3), C.R.S., allows regulatory entities within the Division of Professions and Occupations to adopt rules regarding the recognition by endorsement of occupational credentials issued by another state or United States territory. But several of the regulatory entities' rules conflict with the statute because they authorize the endorsement of occupational credentials issued by a foreign jurisdiction. The rules at issue include rules adopted by the Director of the Division of Professions and Occupations, State Board of Social Work Examiners, State Board of Licensed Professional Counselor Examiners, State Board of Psychologist Examiners, State Board of Addiction Counselor Examiners, and State Board of Marriage and Family Therapist Examiners.

Agency position:

The agency did not contest the staff recommendation not to extend the rules.

¹ Initially, the Office of Legislative Legal Services challenged a second rule, Rule II.A.1. that cross-referenced Rule II.A.2.a. The Department intended to contest the issue with regard to Rule II.A.1.; however, the Office of Legislative Legal Services withdrew its challenge to that rule because it only included a cross reference to the other rule and, therefore, did not directly conflict with the statute.

- 4. Rules of the Division of Professions and Occupations, Department of Regulatory Agencies, concerning the implementation of S.B. 20-102:**
- 3 CCR 707-1 (LLS Docket No. 200631; SOS Tracking No. 2020-00672);**
 - 3 CCR 711-1 (LLS Docket No. 200679; SOS Tracking No. 2020-00665);**
 - 3 CCR 711-2 (LLS Docket No. 200681; SOS Tracking No. 2020-00668);**
 - 3 CCR 716-1 (LLS Docket No. 200689; SOS Tracking No. 2020-00736);**
 - 3 CCR 721-1 (LLS Docket No. 200632; SOS Tracking No. 2020-00673);**
 - 3 CCR 722-1 (LLS Docket No. 200685; SOS Tracking No. 2020-00654);**
 - 4 CCR 726-1 (LLS Docket No. 200611; SOS Tracking No. 2020-00578);**
 - 4 CCR 732-1 (LLS Docket No. 200663; SOS Tracking No. 2020-00739);**
 - 4 CCR 734-1 (LLS Docket No. 200668; SOS Tracking No. 2020-00735);**
 - 4 CCR 735-1 (LLS Docket No. 200677; SOS Tracking No. 2020-00648);**
 - 4 CCR 736-1 (LLS Docket No. 200672; SOS Tracking No. 2020-00733);**
 - 4 CCR 737-1 (LLS Docket No. 200627; SOS Tracking No. 2020-00595);**
 - 4 CCR 738-1 (LLS Docket No. 200670; SOS Tracking No. 2020-00651);**
 - 4 CCR 739-1 (LLS Docket No. 200671; SOS Tracking No. 2020-00660);**
 - 4 CCR 741-1 (LLS Docket No. 200676; SOS Tracking No. 2020-00645);**
 - 4 CCR 744-1 (LLS Docket No. 200637; SOS Tracking No. 2020-00674);**
 - 4 CCR 745-1 (LLS Docket No. 200684; SOS Tracking No. 2020-00661);**
 - 4 CCR 748-1 (LLS Docket No. 200683; SOS Tracking No. 2020-00671);**
 - 4 CCR 749-1 (LLS Docket No. 200678; SOS Tracking No. 2020-00669).**

Staff: Christy Chase

Explanation:

Section 12-30-115, C.R.S., requires certain regulated health care providers to provide a written disclosure regarding a conviction of or discipline based on sexual misconduct to patients before providing professional services, which disclosure must be provided in a form and manner specified by rule of the regulator that regulates the particular provider. Section 12-30-115 (4)(b), C.R.S., grants an exemption to the disclosure requirement for a provider "who does not have a direct treatment relationship or have direct contact with the patient." Various regulators within the Division of Professions and Occupations adopted rules that conflict with section 12-30-115 (4)(b), C.R.S., because the rules provide only a limited, rather than a complete, exception to the disclosure requirement for providers that do not have contact with a patient.

The rules at issue include rules adopted by the Director of the Division of Professions and Occupations, State Board of Addiction Counselor Examiners, State Board of Chiropractic Examiners, State Board of Licensed Professional Counselor Examiners,

State Board of Marriage and Family Therapist Examiners, State Board of Psychologist Examiners, State Board of Nursing, State Board of Unlicensed Psychotherapists, State Physical Therapy Board, and State Board of Social Work Examiners.

Agency position:

The agency did not contest the staff recommendation not to extend the rules.